

<b>COMPLIANCE BOARD OPINION No. 95-10</b>
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November 21, 1995

*Mr. Joseph D. Harris*  
*Mr. David Suznavick*

The Open Meetings Compliance Board has considered your complaint dated September 15, 1995, regarding the meeting involving Senator Mikulski and members of the Ocean City Council. For the reasons set forth in Part II below, the Compliance Board finds no violation of the Act.

**I**

**Complaint and Response**

Your complaint asserts that, on August 29, 1995, “the Mayor and Council met with [Senator] Mikulski” for approximately one hour, during which time “they asked the Senator’s help in resolving an issue regarding vendors on the boardwalk.”<sup>1</sup> You suggest that the Council’s failure to provide reasonable advance notice of the meeting and failure to keep minutes violated the Act.

In a timely response on behalf of the Mayor and City Council, Ocean City Solicitor Guy R. Ayres, III, described the August 29 event as follows:

Senator Mikulski was in Ocean City on August 29, and prior thereto she had scheduled to call upon the mayor that day. The mayor, as a courtesy invited the councilmembers to stop by if they desired. Some councilmembers did stop by while the Senator was in the mayor’s office .... During the approximate[ly] one hour that the Senator was in the mayor’s office there may have been a sufficient number of councilmembers present together to [equal] a quorum ....

Mr. Ayres also acknowledges that the controversial matter of vending on the Boardwalk did come up: “It is correct that council president Feehley mentioned the issue of vendors peddling T-shirts on the public ways under the guise of First Amendment rights and that the Senator responded, that upon written request, she would inquire of the IRS the tax exempt status of the particular vendor.”

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<sup>1</sup> Your letter also refers to a meeting with Senator Mikulski on September 5, when the Senator was evidently not in Ocean City. This date, appearing in passing only in the first paragraph of your letter, appears to be simply a typographical error. Thus, the Compliance Board considers your complaint to be referring only to the meeting on August 29.

However, Mr. Ayres contends that the Open Meetings Act was not violated: “A courtesy call upon a United States Senator is not a consideration or transaction of public business. Further, some limited conversation which might relate to Ocean City does not transform a social gathering into a meeting under the Act.” Mr. Ayres asserts that Council President Feehley’s question “was the extent of the conversation on this subject.” Although the Council subsequently voted to ask the Senator to inquire at the IRS, this discussion and action occurred at a properly announced work session of the Council later on August 29.<sup>2</sup>

## II

### Discussion

The Open Meetings Act applies to the “meetings” of a “public body.” The Act defines the term “meet” to mean “to convene a quorum of a public body for the consideration or transaction of public business.” §10-502(g) of the State Government Article, Maryland Code. By definition, the term “public body” excludes single officials like the Mayor of Ocean City. §10-502(h)(1)(i) and (3)(i). Therefore, the Act did not apply to the meeting between the Mayor and Senator Mikulski.

The situation becomes more complicated when a single official, to whom the Act does not apply, holds a meeting and invites a quorum of a public body, to which the Act does apply. In this situation, the determinative point is whether the public body itself, as an entity, conducts public business.

In Compliance Board Opinion 95-4 (August 14, 1995), the Board considered the situation of members of various public bodies (local election boards) who attended a meeting of a private organization not subject to the Act. We summarized the applicable law this way:

As the Court of Special Appeals recently held, members of a public body do not violate the Act merely by attending a meeting of an entity that is not itself subject to the Open Meetings Act, even if the topic of discussion relates directly to a matter before the public body. *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157 (1994). The crucial point was that the Act applies only if the public body itself separately conducts public business, as distinct from the proceedings of the larger group. If interaction among the members of the public does not occur, and the larger group is not a mere subterfuge to evade the law, no violation occurs.

Opinion 94-4, at 2. Earlier, in Compliance Board Opinion 94-9 (November 15, 1994), we considered whether the Act applied to a meeting called by a city

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<sup>2</sup> Mr. Ayres provided a copy of the minutes reflecting the action at Council’s work session.

administrator, to which members of a city council were invited. The topic, a briefing by various law enforcement officials, surely related to the public business in a broad sense. Yet we concluded that the meeting was not subject to the Act, despite the presence of a quorum of city council members: “[T]he meeting was called by a single official. City Council members were merely invitees to the briefing, which presumably would have taken place whether a quorum of councilmembers was present or not. The Open Meetings Act does not apply under such circumstances, even when a quorum of members of [a] public body is present at the meeting.” Nor did the participation in the briefing by individual councilmembers change the result:

While it is clear that the members of the City Council present at the City Administrator’s meeting learned information that might affect Council deliberations in the future, the test is whether the four members at the meeting functioned as a quorum. We have no basis for so concluding. Their participation appears to have been as individuals, rather as a decision-making body itself engaged in the conduct of public business.

Opinion 94-9, at 2.

In the opinion of the Compliance Board, the Mayor’s invitation to members of the Council to attend his meeting with Senator Mikulski did not transform the meeting into one subject to the Act. The meeting was the Mayor’s and the Senator’s, held to extend courtesy to a visiting dignitary and to enlist her help in matters of interest to the city. Surely it would have gone forward whether or not a majority of Councilmembers were able to attend.

Nor is there sufficient evidence to conclude that the members of the City Council, once assembled at the Mayor’s meeting with Senator Mikulski, themselves conducted business as a public body. The evidence indicates that one member of the Council expressed a concern and posed a question to the Senator on a matter related to Council business. This single official’s comments did not transform the meeting into one subject to the Act.

To be sure, the other Councilmembers present undoubtedly learned something that later played a role when they discussed the issue of vending on the Boardwalk. However, on the information available to the Compliance Board, we conclude that the Councilmembers present during the meeting with the Senator simply never functioned as a quorum at that time and place. Hence, there was no violation of the Open Meetings Act.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler G. Webb